

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known As "Contra Costa 8" Pursuant to A Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion and Operation of the Assets. (U 39 E)

Application 05-06-029
(Filed June 17, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING PREHEARING CONFERENCE FOR
SCHEDULING EVIDENTIARY HEARINGS ON COST RECOVERY**

A prehearing conference (PHC) is set for February 7, 2006, at 10:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California to schedule evidentiary hearings (EHs) on the material issue of fact that has caused some parties to not sign on to the settlement agreement entered into by and between Pacific Gas and Electric Company (PG&E), California Unions for Reliable Energy (CURE), Division of Ratepayer Advocates (DRA)¹ and the Utility Reform Network (TURN). The City and County of San Francisco (CCSF), Modesto Irrigation District and Merced Irrigation District

¹ Formerly known as Office of Ratepayer Advocates (ORA).

(MID), the Independent Energy Producers (IEP) and Californians for Renewable Energy, Inc. (CARE) protest the settlement. MID and CCSF request EHs.

Background

On June 17, 2005, PG&E filed an application seeking Commission authorization for approval of an Asset Transfer Agreement (ATA) for a new combined cycle electric generating facility known as Contra Costa 8 (CC8). PG&E wants to accept, complete construction of, and operate CC8 and requests funding and cost recovery mechanisms to accomplish this.

After protests and comments were received and an initial PHC was held, it was evident that there was little opposition to the CC8 project, but some protesting parties had concerns over other related issues, including the recovery of stranded costs from a nonbypassable charge (NBC). Following the PHC, PG&E held a meeting and PG&E, DRA, TURN and the Coalition of California Utility Employees and California Unions for Reliable Energy (CUE) stipulated that the scope of the proceeding could focus on whether the 10-year NBC approved in D.04-12-048 should be extended to 30 years for CC8.

EHs were scheduled to begin December 5, 2005. Following substantial discovery, testimony was submitted by DRA, MID, CCSF and CARE. PG&E, ORA and TURN engaged in settlement discussions and pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure, on November 28, 2005, PG&E filed a Notice of Settlement Conference for December 5, 2005. On December 2, 2005, a settlement agreement was circulated to the service list.

On December 5, 2005, the EHs were opened, and suspended, to set dates for comments and reply comments to the settlement agreement. Comments were due January 6, 2006, and replies were due January 20, 2006. The non-settling

parties did meet-and-confer with the settling parties, but no other parties joined in the settlement agreement.

Settlement Agreement

DRA, CURE and TURN agree that the Commission should grant PG&E a Certificate of Public Convenience and Necessity (CPCN) for PG&E to accept, complete construction of, and operate CC8, and make the necessary findings for PG&E to recover the reasonable costs of the project. PG&E submitted the settlement agreement for Commission approval. The settlement agreement does contain the authority for PG&E to recover any above-market costs for CC8 for the 30-year life of the project through a NBC, to be determined in another proceeding.

CARE did not join in the settlement agreement, but its concern is whether or not PG&E's application for a CPCN involves a project that is subject to the Environmental Quality Act of 1970 (CEQA). The Commission has yet to make a determination on CARE's motion.

MID and CCSF oppose the settlement agreement because the 30-year cost recovery provision is well beyond the 10-year time period authorized in D.04-12-048 and would negatively impact the customers of MID and CCSF.

The IEP also oppose the settlement agreement because it does not address the issues that are of concern to IEP: 1) Is the project the least-cost/best-fit option for PG&E even though it was chosen outside of a competitive solicitation? and 2) What is the proper means to evaluate this project?.

Need for Hearings

Both CARE and IEP have raised issues of importance concerning PG&E's application for a CPCN for CC8, but these issues do not require evidentiary

hearings as there are no disputed material issues of fact. In addition, neither CARE nor IEP requested EHs.

However, the NBC issue that divides the settling parties from CCSF and MID does require EHs.

The purpose of the February 7, 2006 PHC is for the parties to discuss scheduling of the EHs. It is anticipated that EHs will be set as soon as practical for the parties and the Commission's courtroom schedule. Issues concerning testimony, witnesses, exhibits, and post-EH briefing schedule will also be addressed.

IT IS RULED that a Prehearing Conference is set for February 7, 2006, at 10:00 a.m. in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

Dated January 17, 2006, at San Francisco, California.

/s/ CAROL A. BROWN
Carol A. Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated January 17, 2006, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.